

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

NICHOLE C. HARTER,

Plaintiff,

v.

COMMISSIONER OF SOCIAL  
SECURITY,

Defendant.

CASE NO. 2:24-cv-01177-DGE

ORDER ON MOTION FOR  
ATTORNEY FEES (DKT. NO. 16)

This matter comes before the Court on Plaintiff's motion for attorney fees pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(d).

Under the EAJA, the Court must award attorney fees to the prevailing party in an action such as this unless it finds the government's position was "substantially justified" or that special circumstances make an award unjust. 28 U.S.C. § 2412(d)(1)(A). The EAJA creates a presumption that fees will be awarded to a prevailing party. *Flores v. Shalala*, 49 F.3d 562, 567 (9th Cir. 1995); *Zapon v. United States Dep't of Justice*, 53 F.3d 283, 284 (9th Cir. 1995). The Supreme Court has interpreted the term "substantially justified" to mean that a prevailing party is

1 not entitled to recover fees if the government’s position is “justified to a degree that could satisfy  
2 a reasonable person.” *Pierce v. Underwood*, 487 U.S. 552, 566 (1992). Attorney fees under  
3 EAJA must be reasonable. 28 U.S.C. § 2412(d)(2)(A); *Hensley v. Eckerhart*, 461 U.S. 424, 433  
4 (1983).

5 If a party obtains reversal and remand in a social security benefits case, they are the  
6 “prevailing party” under the EAJA. *Gutierrez v. Barnhart*, 274 F.3d 1255, 1257 (9th Cir. 2001).  
7 Thus, Plaintiff is the prevailing party. (See Dkt. No. 14, Order Remanding for Award of  
8 Benefits.) Likewise, a “holding that the agency’s decision . . . was unsupported by substantial  
9 evidence is . . . a strong indication that the position of the United States . . . was not substantially  
10 justified.” *Meier v. Colvin*, 727 F.3d 867, 874 (9th Cir. 2013) (quoting *Thangaraja v. Gonzales*,  
11 428 F.3d 870, 874 (9th Cir. 2005)). Here, the Court concluded that the ALJ’s opinion was not  
12 supported by substantial evidence and constituted legal error. (Dkt. No. 14 at 21.) Defendant  
13 has not replied to this motion or otherwise shown that the government’s position was justified.  
14 Therefore, under these circumstances, the Court finds fees should be awarded.

15 Plaintiff is entitled to “reasonable” fees. 28 U.S.C. § 2412(d)(2)(A). Determining  
16 reasonableness “will always depend on case-specific factors including, among others, the  
17 complexity of the legal issues, the procedural history, the size of the record, and when counsel  
18 was retained.” *Costa v. Comm’r of Soc. Sec. Admin.*, 690 F.3d 1132, 1136, 1137 (9th Cir. 2012).  
19 The fee applicant bears the burden of proving reasonableness. 28 U.S.C. § 2412(d)(2)(A);  
20 *Hensley v. Eckerhart*, 461 U.S.424, 437 (1983) (“[T]he fee applicant bears the burden of  
21 establishing entitlement to an award and documenting the appropriate hours expended and hourly  
22 rates.”).

1 Plaintiff applies for an award of \$8,964.77, which represents compensation for the time  
2 Plaintiff's lawyers and paralegals spent on this action—35.2 hours of attorney work and 1.0 hour  
3 of paralegal work. (Dkt. No. 16-1 at 2.) *See Richlin Sec. Serv. Co. v. Chertoff*, 553 U.S. 571,  
4 590 (2008) (paralegal time is compensable under the EAJA.) Plaintiff provides an itemized  
5 statement of the time expended and asserts the hours are reasonable because “(1) each time entry  
6 reflects legitimate activity to provide quality service to Plaintiff and to this Court, and (2)  
7 Plaintiff's attorney prepared for this Court a substantial opening and reply brief.” (Dkt. No. 16 at  
8 4.) The hourly rate for Plaintiff's counsel is \$251.84; the rate for paralegal services is \$100.  
9 (Dkt. No. 16-1 at 2.) Thus, Plaintiff's counsel's hourly rate is the statutory maximum hourly rate  
10 under EAJA. (*Id.*; *Smith v. Comm'r of Soc. Sec. Admin.*, No. CV-22-01537-PHX-JAT, 2025 WL  
11 1580997, \*4 (D. Ariz. June 4, 2025)). The Commissioner has filed no objections to this hourly  
12 rate or the number of hours that Plaintiff's counsel spent on this case. The Court finds that the  
13 requested number of hours is reasonable, and that Plaintiff is entitled to the statutory hourly rate  
14 pursuant to the EAJA.

15 Therefore, it is hereby ORDERED that fees in the amount of \$8,964.77 shall be awarded  
16 to Plaintiff pursuant to the EAJA. Plaintiff assigned her EAJA fee award to her attorney in the  
17 fee agreement. (Dkt. No. 16-2 at 1.) Accordingly, attorney and paralegal fees in the amount of  
18 \$8,964.77 will be paid to Plaintiff's attorney, subject to verification that Plaintiff does not have a  
19 debt which qualifies for offset against the awarded fees, pursuant to the Treasury Offset Program  
20 as discussed in *Astrue v. Ratliff*, 560 U.S. 586 (2010). If Plaintiff has no such debt, then the  
21 check shall be made out to Plaintiff's attorney: H. Peter Evans at Evans & Evans, PC, 222 NE  
22 Park Plaza Drive, Suite 113, Vancouver, WA 98684. If Plaintiff has a debt, then the check for  
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1 any remaining funds after offset of the debt shall be made out to Plaintiff and mailed to  
2 Plaintiff's attorney's office.

3 Dated this 2nd day of July, 2025.

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David G. Estudillo  
United States District Judge  
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